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(3) Whenever a submitter desires to withdraw a document from Commission consideration, it may request return of the document, and the document will be returned unless the information—

(i) Forms part of the basis of an official agency decision, including but not limited to, a rulemaking proceeding or licensing activity;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was revealed, or relied upon, in an open Commission meeting held in accordance with 10 CFR Part 9, Subpart C;

(iv) Has been requested in a Freedom of Information Act request; or

(v) Has been obtained during the course of an investigation conducted by the NRC Office of Investigations.

(d) The following information shall be deemed to be commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection, classified matter protection, or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) Submitting information to NRC for consideration in connection with NRC licensing or regulatory activities shall be deemed to constitute authority for the NRC to reproduce and to distribute sufficient copies to carry out the Commission's official responsibilities.

(f) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents made available pursuant to this section,

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issue orders consistent with the provisions of this section and § 2.740(c).

[41 FR 11810, Mar. 22, 1976, as amended at 42 FR 12877, Mar. 7, 1977; 52 FR 49355, Dec. 31, 1987; 53 FR 17688, May 18, 1988; 64 FR 15641, Apr. 1, 1999; 64 FR 48948, Sept. 9, 1999; 68 FR 18842, Apr. 17, 2003]

Subpart H—Rulemaking

§ 2.800 Scope of rulemaking.

This subpart governs the issuance, amendment and repeal of regulations in which participation by interested persons is prescribed under section 553 of title 5 of the U.S. Code.

[35 FR 11459, July 17, 1970]

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/eie.html>, by calling (301) 415-6030, by e-mail to EIE@nrc.gov, or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of

electronic signatures, and the treatment of nonpublic information.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. A prospective petitioner also may telephone the Rules and Directives Branch on (301) 415-7163, or toll free on (800) 368-5642, or send e-mail to NRCREP@nrc.gov.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current

rule is unduly burdensome, deficient, or needs to be strengthened.

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Administrative Services, Office of Administration, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will make a copy of the docketed petition available at the NRC Web site, <http://www.nrc.gov>. Public comment may be requested by publication of a notice of the docketing of the petition in the FEDERAL REGISTER, or, in appropriate cases, may be invited for the first time upon publication in the FEDERAL REGISTER of a proposed rule developed in response to the petition. Publication will be limited by the requirements of Section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(f) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraph (c) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC

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Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room.

[44 FR 61322, Oct. 25, 1979, as amended at 46 FR 35487, July 9, 1981; 52 FR 31609, Aug. 21, 1987; 53 FR 52993, Dec. 30, 1988; 54 FR 53315, Dec. 28, 1989; 56 FR 10360, Mar. 12, 1991; 59 FR 44895, Aug. 31, 1994; 59 FR 60552, Nov. 25, 1994; 62 FR 27495, May 20, 1997; 63 FR 15742, Apr. 1, 1998; 64 FR 48949, Sept. 9, 1999; 68 FR 58799, Oct. 10, 2003]

§ 2.803 Determination of petition.

No hearing will be held on the petition unless the Commission deems it advisable. If the Commission determines that sufficient reason exists, it will publish a notice of proposed rulemaking. In any other case, it will deny the petition and will notify the petitioner with a simple statement of the grounds of denial.

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the FEDERAL REGISTER a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined will be made available at the NRC Web site, <http://www.nrc.gov>;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding officer and any special directions for the conduct of the hearing; and

(6) Such explanatory statement as the Commission may consider appropriate.

(c) The publication or service of notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any, unless the Commission

for good cause stated in the notice provides otherwise.

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(e) The Commission shall provide for a 30-day post-promulgation comment period for—

(1) Any rule adopted without notice and comment under the good cause exception on paragraph (d)(2) of this section where the basis is that notice and comment is “impracticable” or “contrary to the public interest.”

(2) Any interpretative rule, or general statement of policy adopted without notice and comment under paragraph (d)(1) of this section, except for those cases for which the Commission finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(f) For any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the FEDERAL REGISTER containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

[27 FR 377, Jan. 13, 1962, as amended at 50 FR 13010, Apr. 2, 1985; 64 FR 48949, Sept. 9, 1999]

§ 2.805 Participation by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the